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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 BANK OF NEW YORK MELLON,

11 Plaintiff(s),

12 vs.

13 VEGAS PROPERTY SERVICES, INC., et al.,

14 Defendant(s).
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) Case No. 2:17-cv-00776-MMD-NJK
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) ORDER
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) (Docket No. 16)
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16 Pending before the Court is Plaintiff's motion to stay discovery pending resolution of its motion
17 for summary judgment. *See* Docket No. 16; *see also* Docket No. 15 (motion for summary judgment).
18 Defendant filed a response in opposition. Docket No. 20. No reply was filed. The Court finds the
19 motion properly resolved without a hearing. *See* Local Rule 78-1. For the reasons discussed below, the
20 Court **DENIES** the motion to stay discovery.

21 The Court has broad discretionary power to control discovery. *See, e.g., Little v. City of Seattle*,
22 863 F.2d 681, 685 (9th Cir. 1988). "The Federal Rules of Civil Procedure do not provide for automatic
23 or blanket stays of discovery when a potentially dispositive motion is pending." *Tradebay, LLC v. eBay*,
24 *Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011).¹ The party seeking a stay carries the heavy burden of making
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27 ¹ As the briefing acknowledges, various judges in this District have found it appropriate to stay
28 proceedings pending resolution of petitions for *certiorari* in the United States Supreme Court. Docket No.
20 at 5. That issue is not presently before the Court, but rather the motion seeks a stay of discovery pending
resolution of Plaintiff's motion for summary judgment.

1 a strong showing why discovery should be denied. *See, e.g., Turner Broadcasting Sys., Inc. v. Tracinda*
2 *Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997). The case law in this District makes clear that requests to
3 stay all discovery may be granted when: (1) the pending motion is potentially dispositive; (2) the
4 potentially dispositive motion can be decided without additional discovery; and (3) the Court has taken
5 a “preliminary peek” at the merits of the potentially dispositive motion and is convinced that the plaintiff
6 will be unable to state a claim for relief. *See Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 581 (D.
7 Nev. 2013).²

8 The Court finds that a stay of discovery is not appropriate in this case. Most significantly, the
9 Court has taken a preliminary peek at the motion for summary judgment and is not convinced that it will
10 be granted.³ It bears repeating that the filing of a non-frivolous dispositive motion, standing alone, is
11 simply not enough to warrant staying discovery. *See, e.g., Tradebay*, 278 F.R.D. at 603. Instead, the
12 Court must be “convinced” that the dispositive motion will be granted. *See, e.g., id.* “That standard is
13 not easily met.” *Kor Media*, 294 F.R.D. at 583. “[T]here must be *no question* in the court’s mind that
14 the dispositive motion will prevail, and therefore, discovery is a waste of effort.” *Id.* (quoting *Trazska*
15 *v. Int’l Game Tech.*, 2011 WL 1233298, *3 (D. Nev. Mar. 29, 2011)) (emphasis in original). The Court
16 requires this robust showing that the dispositive motion will succeed because applying a lower standard
17 would likely result in unnecessary delay in many cases. *Id.* (quoting *Trazska*, 2011 WL 1233298, at *4).

18 The Court has carefully reviewed the arguments presented in the motion for summary judgment,
19 as well as the arguments made in the briefing on the motion to stay discovery.⁴ The Court is simply not
20 convinced that the motion for summary judgment will be granted, such that conducting discovery will
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22 ² The pending motion is somewhat unusual in that it is the plaintiff seeking a stay of discovery
23 pending resolution of its dispositive motion. As such, the Court modifies the applicable standards in that
24 it is taking a preliminary peek to determine whether it is convinced that dispositive relief will be granted to
Plaintiff vis-a-vis its motion for summary judgment.

25 ³ Conducting this preliminary peek puts the undersigned in an awkward position because the assigned
26 district judge who will decide the motion to dismiss may have a different view of its merits. *See Tradebay*,
27 278 F.R.D. at 603. The undersigned’s “preliminary peek” at the merits of that motion is not intended to
prejudice its outcome. *See id.*

28 ⁴ Briefing on the motion for summary judgment has not been completed.

1 be a waste of effort. *See, e.g., Bayview Loan Serv., LLC v. SFR Investments Pool 1, LLC*, 2017 WL
2 1100955, at *4-5 (D. Nev. Mar. 22, 2017) (rejecting arguments similar to those presented by Plaintiff
3 here).

4 Accordingly, the Court **DENIES** Plaintiff's motion to stay discovery. Docket No. 16.

5 IT IS SO ORDERED.

6 DATED: May 2, 2017

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10 NANCY J. KOPPE
11 United States Magistrate Judge
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